

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 275

September 17, 1998, 2:27 p.m.
Page S-10473 Temp. Record

BANKRUPTCY REFORM/ATM Access Fees

SUBJECT: Consumer Bankruptcy Reform Act . . . S. 1301. Grassley motion to table the D'Amato amendment No. 3597 to the Grassley/Hatch substitute amendment No. 3559 to the committee substitute.

ACTION: MOTION TO TABLE AGREED TO, 72-26

SYNOPSIS: As reported with a substitute amendment, S. 1301, the Consumer Bankruptcy Reform Act, will enact reforms to prevent creditors who have the means of paying their debts from unjustly filing for bankruptcy, and will enact reforms to protect consumers from unfair credit practices.

The Grassley/Hatch substitute amendment would retain the underlying substitute amendment's provisions, would modify the pre-bankruptcy counseling requirement, and would add provisions relating to business bankruptcies.

The D'Amato amendment would prohibit financial institutions that operate automatic teller machines (ATMs) from imposing fees for using those ATMs on consumers who do not have accounts with them. More specifically, with respect to any transaction conducted at an electronic terminal, an electronic terminal surcharge could not be assessed against a consumer if the transaction: did not relate to or affect an account held by that consumer with the financial institution that owned or operated the terminal; and was conducted through a national or regional electronic banking network.

Debate was limited by unanimous consent. After debate, Senator Grassley moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

ATM machines cost between \$30,000 and \$80,000, and the costs of operating and maintaining them are based on many factors, including the safety of the areas in which they are placed and how often they are used. Further, many of those machines are totally dependent on access fees, particularly some of the smaller machines in convenience stores and grocery stores. If we were to ban

(See other side)

YEAS (72)			NAYS (26)		NOT VOTING (2)	
Republicans (51 or 94%)	Democrats (21 or 48%)		Republicans (3 or 6%)	Democrats (23 or 52%)	Republicans (1)	Democrats (1)
Abraham	Hutchison	Akaka	Chafee	Bingaman	Coverdell- ²	Hollings- ²
Allard	Inhofe	Baucus	D'Amato	Boxer		
Ashcroft	Jeffords	Biden	McCain	Bryan		
Bennett	Kempthorne	Breaux		Bumpers		
Bond	Kyl	Byrd		Dodd		
Brownback	Lott	Cleland		Durbin		
Burns	Lugar	Conrad		Feingold		
Campbell	Mack	Daschle		Feinstein		
Coats	McConnell	Dorgan		Glenn		
Cochran	Murkowski	Ford		Harkin		
Collins	Nickles	Graham		Kennedy		
Craig	Roberts	Inouye		Kerry		
DeWine	Roth	Johnson		Kohl		
Domenici	Santorum	Kerrey		Lautenberg		
Enzi	Sessions	Landrieu		Levin		
Faircloth	Shelby	Leahy		Lieberman		
Frist	Smith, Bob	Reed		Mikulski		
Gorton	Smith, Gordon	Reid		Moseley-Braun		
Gramm	Snowe	Robb		Moynihan		
Grams	Specter	Rockefeller		Murray		
Grassley	Stevens	Wyden		Sarbanes		
Gregg	Thomas			Torricelli		
Hagel	Thompson			Wellstone		
Hatch	Thurmond					
Helms	Warner					
Hutchinson						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

access charges, the result would be that many of the machines in marginal locations would have to be removed and all of the machines that rely solely on access charges would have to be eliminated. We think that this result would be harmful to consumers. Currently, no one is forced to use an ATM, and any time a fee is charged the consumer is notified before it is charged and given the option of not proceeding with the transaction. The Federal Government should not ban access fees. We urge our colleagues to table this amendment.

While favoring the motion to table, some Senators expressed the following reservations:

Our colleagues have made a very strong argument that the current ATM access fees that are being charged are gouging consumers. However, we must also be very careful of interfering in this market, because we may unintentionally cause large numbers of ATMs in marginal locations to close, at the great inconvenience of consumers who are currently using those ATMs voluntarily. Those consumers certainly do not like paying access fees, but they would like even less not having any ATMs nearby. This issue definitely merits further study. The Banking Committee should hold hearings. In the future, we may well support an effort to ban ATM double charges, but right now the effect of such a ban is too uncertain. Therefore, we must oppose the D'Amato amendment.

Those opposing the motion to table contended:

When ATMs began they were promoted as a big benefit for both banks and consumers. According to a 1996 Mentis Corporation study, the costs (for a bank) of going to a bank teller range from 90 cents to \$1.15 per transaction, but the transactions costs of using an ATM average only 22 cents to 28 cents per transaction. Banks understandably want their customers to use ATMs as much as possible in order to lower transactions costs. Throughout the 1990s a large network of ATMs spread across the country. By 1996 there were 122,000 ATMs in the United States. Most of those ATMs were (and are) owned by the large money center banks. The money center banks entered into agreements with other financial institutions to let those financial institutions' account holders use their ATMs. In those agreements, the financial institutions were often charged fees, which they could pass on to their account holders, but the ATM owners promised not to impose their own fees. This deal was good enough for most banks to forego establishing their own ATMs. In 1996, though, once the network was established, the large banks started charging non-account holders large transaction fees. Before 1996, fees did not exist; now, more than 74 percent of the ATMs have fees, and the average fee is \$1.50. The member banks that have entered into agreements to use these ATMs still have to pay an average of \$1.18 each time their account holders make a transaction, and that fee is typically passed on to the customer. Thus, the average cost for Americans of using an ATM has climbed to \$2.68. That is an extremely usurious cost for a person who needs to get his or her own cash quickly. A few large banks offered all other banks a good deal when ATMs were being established in order to make it possible for them to create a monopoly situation, and now that they have created that situation they are taking advantage of it by raking in profits. They already charge other banks several times the transaction costs of letting those other banks' customers use their ATMs--the extra amounts (\$3 billion in 1997 alone) they are now getting from double-charging are pure monopoly profit. A few States have tried to ban this greedy practice of double-charging, but those laws have been challenged as a restraint on interstate trade. The Federal Government, therefore, needs to get involved. The D'Amato amendment is very straightforward. It would ban double-charging. We strongly urge our colleagues to support this amendment.